IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

CRP.No. 220 of 2007()

I.A. 3999/06 IN OS.588/2005 of ADDL.M.C.,KANNUR
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REVN. PETITIONER/PETITIONERS/PLAINTIFFS:
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1. P.P.SULATHA, SAI KRISHNA,
PANNAPPARA ROAD, AGRICULTURIST, PALLIKUNNU,
KANNUR-4.

2. C.K.DHARMADAS,
SAI KRISHNA, PANNAPPARA ROAD, AGRICULTURIST,
PALLIKUNNU, KANNUR-4.

BY ADV. SRI.C.VALSALAN
SRI.T.S.RADHAKRISHNA PILLAI
SMT.THUSHARA.V

RESPONDENTS/RESPONDENTS/DEFENDANTS:
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1. M/S.LIC HOUSING FINANCE LTD.,
REGISTERED AND CORPORATE OFFICE BOMBAY LIFE
BUILDING, 2ND FLOOR 45/44, NEAR NARIMAN ROAD,
MUMBAI- 600 001.

2. AREA MANAGER,
REP.M/S.LIC HOUSING FINANCE LTD.,
ROYA PALACE BUILDING, RAILWAY STATION LINK ROAD,
KOZHIKODE.

3. LIC HOUSING FINANCE LTD.,
REP.BY REGIONAL MANAGER, REGIONAL OFFICE,
CHENNAI-05.

BY ADV. SRI.NIRMAL. S
SRI.K.BIJESH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 220 OF 2007

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Dated this the 24th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Kannur in I.A.3999 of 2006 in O.S.588/05. It was an application for permission to withdraw the suit with liberty to file a fresh suit. The prayer in the suit is for redemption of the mortgage property from the defendant against payment of money due to the defendant as ascertained as per the provisions of the Usurious Loans Act. It is averred in the petition that the remedy now available to them at this stage is only to approach the Subordinate Judge, Thalassery for realisation of the excess amount that has been deposited under the compelling circumstances. The Court below found that under Order 23 Rule (1) (3) permission to withdraw the suit with liberty to institute a fresh suit in respect of the subject matter of the suit or a part of the same alone can be granted for the reasons mentioned therein.

Here, admittedly, the suit is one for redemption of mortgage. The proposed suit if filed before the Subordinate Judge, Thalassery is one for realisation of the excess amount. One cannot hold that this subject matter is the same which will attract S.23(1)(3) so as to grant permission. Therefore, I do not find any mistake committed by the Court below in refusing to grant permission and therefore the said order is confirmed. However, it is made clear that if the present revision petitioners are entitled to proceed in accordance with law and institute any other proceedings it is left open to them.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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